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FAX
REPLY TO ST. LOUIS

April 26, 1993

Mr. Kevin P. Holewinski
Mr. Leonard M. Gelman
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20004

Mr. Steven M. Siegel
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3950

Re: U.S. v. NL Industries, Inc., et al

Gentlemen:

Your correspondence of April 9, 1993, and our follow-up phone conversation of April 19, 1993, have been a great disappointment to the Defendants. Those communications have raised serious questions about whether the Government's offer to reopen the record, ostensibly for the purpose of conducting a substantial and objective reconsideration of the contested part of the remedy, is serious. This, in turn, causes us to doubt whether the Government has even the slightest interest in resolving this case without the involvement of the Court. In particular, we are concerned for the following reasons:

1. As more fully discussed below, the Government's April 9, 1993, letter has grossly mischaracterized Defendants' position set forth in our March 16, 1993, letter. In your letter of February 19, 1993, the Government offered to reopen the administrative record as an alternative to Defendants' request that the Court appoint independent experts to help resolve issues fundamental to this case. The reopening would enable the Government to reconsider the contested portion of the remedy on the basis of important evidence, including a recent Government health study of Granite City residents. In our March 16, 1993, response to



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that offer, Defendants offered reasonable conditions that would promote objectivity in the record reopening process offered by the Government. We are especially concerned by the mischaracterizations of these conditions because during our telephone conversation with the Government on April 19, 1993, the Government's understanding of Defendants' proposals and the reasons for them were crystal clear.

2. The Government's position concerning Defendants' proposals is inconsistent with any objective reexamination and reconsideration of the contested part of the remedy by the Government.
3. Although the Government proposed a conference with Defendants in its April 9 letter, the Government expressed reluctance to go forward with a meeting, and initially objected to the presence of Granite City representatives at any such meeting during our April 19 telephone conversation.

The Government Has Mischaracterized Defendants' Proposals

1. Residential Soil Removal

Our March 16, 1993, letter requested the Government not to perform any residential soil removal because it is unrelated to any imminent hazard or threat and is the very issue to be reconsidered as a part of the Government's proposal to reopen the record. We told you that proceeding with the disputed residential soil removal is inconsistent with your offer, with CERCLA, and, with your use of the Rapid Response Program. We did not object to the removal of battery casing material, an uncontested remedial activity. Indeed, Defendants support a cleanup of the battery casing material and are willing to reimburse the Government for the costs of such removal, if the Government goes forward with the work, to the extent such costs are properly incurred under CERCLA.

During our Monday conversation, it was clear that you understood the distinction we made between battery case materials and soil. Despite this, your letter to the Court portrayed our very limited condition -- that residential soils not be removed -- as an objection to the entire rapid response cleanup. During our telephone conversation with you, you refused even to give us notice of when this discretionary residential soil removal is to take place.

2. EPA Decision-Makers

Your April 9, 1993, letter states that we require removal of certain EPA employees from the decision-making process once the administrative record is reopened. We note that your response in no way addresses our concern that these individuals have to date been inflexibly committed to the contested remedy; it simply states that the Regional Administrator will be making the

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decision. We only ask that additional technical input from new sources be added to the process, as contemplated in 42 U.S.C. § 9604(i)(6). We never used the terms "replace" or "dismiss." To suggest to the contrary is again an attempt by the Government to try and make our proposal appear to be other than what it is.

The Government's Position Is Inconsistent With An Objective Review And Consideration Of New Evidence

The Government's refusal to dismiss its penalty claims also demonstrates a lack of willingness to open the way for objective review of information submitted in the new comment period. As you know, the PRPs agreed to perform all aspects of the remedy with the exception of residential soil removal below 1000 ppm. As all parties have expressed to the Court, this is the lone issue preventing a voluntary accord. EPA cannot objectively review new evidence in an administrative reconsideration at the same time it actively seeks penalties for Defendants' failure to abide by the very decision to be reconsidered. This leads us to believe that the Government has no intention of objectively reconsidering the residential soil cleanup issue.

The Parties Should Meet If They Can Productively Discuss Terms Of An Objective Record Reopening and Reconsideration

In order for the additional comment period to be productive, we should eliminate any incentive to reach a less than objective result. Otherwise, it would be best to proceed with our proposal and to form a technical committee of independent experts to review that aspect of the remedy presently in dispute. These experts would not have any predisposition arising from the existence of this litigation.

When we proposed a meeting in Washington in response to your suggestion of a conference call, you clearly indicated reluctance to have such a meeting. You only agreed to go forward after we insisted that such a meeting was the only way to approach a resolution of this matter seriously without the Court's intervention. When we indicated that the City needed to be a participant in such a meeting, you again reacted negatively, despite the fact that the City is entitled to participate because it is an Intervening Defendant in this case.

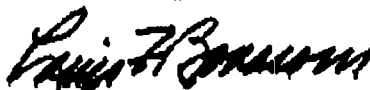
You agreed to the meeting on the condition that we first provide you with a list of those areas we wish to discuss and the exceptions that we have to your proposal. We believe our March

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16, 1993, letter, subsequent telephone conversations, and this letter sufficiently delineate our position.

If you are willing to meet with representatives of all of the Defendants on April 29, 1993, as we suggested, if you are serious in your desire to negotiate, and if you have the necessary authority in hand, then we will meet with you on the 29th of April in Washington, D.C., or wherever else you choose. In the meantime, we request that no residential soil cleanup proceed in the face of the objections of the representatives of Granite City and the PRPs, and in light of your commitment to the Court to proceed with reopening of the Record.

Very truly yours,



Louis F. Bonacorsì

Copy to:
The Honorable James L. Foreman
Chief Judge
United States District Court for the
Southern District of Illinois
301 West Main Street
Benson, Illinois 62812

Counsel for City of Granite City
Mr. Mark C. Goldenberg
City of Granite City
City Attorney
2132 Pontoon Road
Granite City, Illinois 62040

AND

Ms. Susan B. Bacon
City of Granite City
Assistant City Attorney
2000 Edison Avenue
Granite City, Illinois 62040

JAN-13-'00 FRI 13:57 ID:

TEL NO:

#013 P01



City of Granite City

Granite City, Illinois 62040

Von Dee Cruse
MayorRobert W. Stevens
City ClerkGail Valle
TreasurerMark C. Goldenberg
City AttorneyClayton Harrison
Supv. of Streets

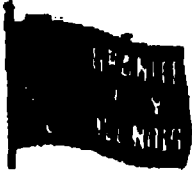
FAX NO.: (618)452-6236

PLEASE DELIVER THE FOLLOWING FAX DOCUMENTS TO:NAME: Karen Holowinski & Lee Skolman

DEPT./CO.: _____

FAX NO.: (202) 514-2583FROM: Susan E. BaconTITLE: Assistant City AttorneyPHONE: (618) 452-6234DATE: 4/26/92 TIME: 3:40 AM (PM)THIS IS PAGE 1 OF 2 PAGES**COMMENTS OR SPECIAL INSTRUCTIONS:**Letter attached.

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City of Granite City

Granite City, Illinois 62040

Von Dee Cruse
MayorRobert W. Stevens
City ClerkGail Valle
TreasurerMark C. Goldenberg
City AttorneyClayton Harrison
Supt. of Streets

April 26, 1993

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Steven M. Siegel
Assistant Regional Counsel
U.S. EPA, Region 5
230 S. Dearborn
(SCS-TUE-30)
Chicago, IL 60604

RE: U. S. v. NL Industries, et al.

Gentlemen:

The City of Granite City was advised Friday morning during a telephone conference between Susan Bacon and Joseph Nassif that a meeting will be held on Thursday, April 29 to discuss the Government's proposal to reopen the Administrative Record and to consider additional information in possibly revising the existing residential soil cleanup plan.

It is our understanding that the City, as an intervening defendant, will participate in all negotiations or conferences relating to this litigation, and therefore the City is prepared to attend this meeting on April 29. The City will willingly travel to Washington D.C. in order to accommodate all participants.

In addition, the City would like to use this meeting as an opportunity to review the ongoing Rapid Response cleanup with you. We have several questions which have yet to be answered.

Please personally advise me or Susan Bacon as soon as final arrangements for the April 29 meeting have been made so that the City may make necessary travel arrangements.

Sincerely,

A handwritten signature of Von Dee Cruse in cursive script.

Von Dee Cruse
Mayor

VDC/seb